



FEDERAL GOVERNMENT TO LEGISLATE FOR PAID FAMILY AND DOMESTIC VIOLENCE LEAVE

On 16 May 2022, the Fair Work Commission handed down judgement in respect of its 2021 review of employee entitlements to family and domestic violence leave.

Having considered all of the evidence put before it by the parties participating in the review, the Commission took the provisional view that an entitlement to 10 days' paid family and domestic violence leave (**FDV leave**) per year ought to be extended to all full-time employees and (on a *pro rata* basis) part-time employees covered by a modern award established under the national system.

Such an entitlement, if implemented, would grant some 2.6 million award-covered employees the right to access paid FDV leave for the first time. The Commission proposed that a "model term" be prepared to this effect, upon the basis that the entitlement to 10 days' FDV leave should:

- accrue progressively across the year in the same manner as personal/carer's leave accrues under the National Employment Standards (**NES**);
- accumulate from year to year, subject to a "cap" which ensures no more than 10 days of FDV leave are accrued by an employee at any given time;
- be accessible in advance of accrual, by agreement between an employer and employee; and
- be paid at the employee's base rate of pay for ordinary hours of work.

Importantly, the Commission does not propose that there should be any changes to what constitutes "*family and domestic violence*" under section 106B of the *Fair Work Act 2009* (Cth) (**Act**). Under that section, only violent, threatening or other abusive behaviour perpetrated by a "*close relative*" of the employee meets the criteria for access to FDV leave. The Commission's view is that violent or abusive acts carried out by a member of the employee's household who they are *not* related to is insufficient for this purpose.

The Commission has since invited the parties participating in the review to submit a draft model term to give effect to the above by 1 July 2022. The Commission has also sought clarity from the Commonwealth Government as to whether it proposes to vary the NES to allow for an entitlement to paid FDV leave.



Currently, the NES only provides an entitlement of 5 days' *unpaid* FDV leave in any given year. This entitlement is enshrined at section 106A of the Act. As things stand, this entitlement applies to all national system employees who are not afforded additional rights under their employment contract or an enterprise agreement; there is currently no additional entitlement to FDV leave under the existing modern award regime. The existing entitlement does not accrue from year to year but, crucially, is available to casual and seasonal employees in addition to full and part-time employees. The Commission stopped short, in its review, of recommending that a paid FDV leave entitlement under the modern award system be extended to casuals.

The newly-installed Labor Government has subsequently confirmed that it intends to introduce legislation to the Federal Parliament with a view to an entitlement to 10 days' FDV leave being inserted into the NES "*as soon as possible.*" Parliament is next scheduled to sit in July 2022.

A change to the NES to this effect would result in some 8.5 million workers receiving the benefit of paid FDV leave. It remains to be seen how much the Government's proposed legislation will reflect, or differ from, the Commission's suggested amendments to modern awards.

A number of employee advocacy groups, such as the Australian Council of Trade Unions, have voiced support for any new paid FDV leave entitlement to extend to all employees, including casuals. Business and industry groups, meanwhile, have expressed concerns that implementing a regime of paid FDV leave will prove cost-prohibitive for many employers. However, the Commission suggested during the review that any implementation costs would be less than the costs employers are frequently obliged to endure due to the absenteeism and lost productivity that arise from their employees suffering from family and domestic violence. It is believed by the Commission that paid FDV leave will offset or reduce those costs.

Significantly, the Commission also posited that an entitlement to paid FDV leave would help individuals suffering from FDV to "*maintain their economic security, to access relevant services and to safely exit to a life free from violence.*"

Whatever the exact form of any changes to modern awards and/or the NES that result from the processes discussed above, it is clear that the introduction of paid FDV leave will likely have a profound social, professional and financial impact for millions of Australian workers and their families. Murfett Legal will continue to monitor the developing situation, to be in a position to advise employers and employees alike of their rights and obligations as they change.

For further information or assistance contact Murfett Legal on [+61 8 9388 3100](tel:+61893883100).

Note: The above is a summary for general information purposes only. It is not intended to be comprehensive or constitute legal advice. You should seek formal legal or other professional advice in relation to your particular circumstances before relying on the content of this article.

Author: [Martin Fletcher](#) (Associate: Business Advisory, Commercial and Insolvency)

Email: martin.fletcher@murfett.com.au



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Level 2, 111 Wellington Street, East Perth WA 6004 • PO Box 6314, East Perth WA 6892

T: +61 8 9388 3100 • F: +61 8 9388 3105 • E: reception@murfett.com.au

ABN 74 120 362 825 • W: www.murfett.com.au

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